



DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 635

[Docket No. 211108-0227]

RTID 0648-XT040

Atlantic Highly Migratory Species; 2022 Atlantic Shark Commercial Fishing Year

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Final rule; fishing season notification.

SUMMARY: This final rule establishes the 2022 opening date for all Atlantic shark fisheries, including the fisheries in the Gulf of Mexico and Caribbean. This final rule also establishes the shark fisheries quotas for the 2022 fishing year, with adjustments based on harvest levels during 2021 and establishes the large coastal shark (LCS) initial retention limits for directed shark limited access permit holders. NMFS may increase or decrease these retention limits for directed shark limited access permit holders during the year, in accordance with existing regulations, to provide equitable fishing opportunities for commercial shark fishermen in all regions and areas, to the extent practicable. These actions could affect fishing opportunities for commercial shark fishermen in the northwestern Atlantic Ocean, including the Gulf of Mexico and Caribbean Sea.

DATES: This rule is effective on January 1, 2022. The 2022 Atlantic commercial shark fishing year opens on January 1, 2022, for all species and regions.

ADDRESSES: Atlantic Highly Migratory Species (HMS) Management Division, 1315 East-West Highway, Silver Spring, MD 20910;

<https://www.fisheries.noaa.gov/topic/atlantic-highly-migratory-species>.

FOR FURTHER INFORMATION CONTACT: Guy DuBeck

(guy.dubeck@noaa.gov), Derek Kraft (derek.kraft@noaa.gov), or Karyl Brewster-Geisz (karyl.brewster-geisz@noaa.gov) at 301-427-8503.

SUPPLEMENTARY INFORMATION:

Background

The Atlantic commercial shark fisheries are managed under the authority of the Magnuson-Stevens Fishery Conservation and Management Act (Magnuson-Stevens Act). The 2006 Consolidated Atlantic HMS Fishery Management Plan (FMP) and its amendments are implemented by regulations at 50 CFR part 635. For the Atlantic commercial shark fisheries, the 2006 Consolidated HMS FMP and its amendments established default commercial shark retention limits, commercial quotas for species and management groups, and accounting measures for underharvests and overharvests. The retention limits, commercial quotas, and accounting measures can be found at §§ 635.24(a) and 635.27(b). Regulations also include provisions allowing flexible opening dates for the fishing year (§ 635.27(b)(3)) and inseason adjustments to shark trip limits (§ 635.24(a)(8)), which provide management flexibility in furtherance of equitable fishing opportunities, to the extent practicable, for commercial shark fishermen in all regions and areas. In addition, § 635.28(b)(4) lists species and/or management groups with quotas that are linked. If quotas are linked, when the specified quota threshold for one management group or species is reached and that management group or species is closed, the linked management group or species closes at the same time (§ 635.28(b)(3)). Lastly, pursuant to § 635.27(b)(3), any annual or inseason adjustments to the base annual commercial overall, regional, or sub-regional quotas will be published in the Federal Register.

On August 8, 2021, NMFS published a proposed rule (86 FR 43151) regarding management measures for the commercial shark fisheries for the 2022 fishing year. The

rule proposed opening all Atlantic commercial shark management groups on January 1, 2022, setting initial retention limits for LCS by directed shark limited access permit holders, and adjusting certain quotas for the 2022 fishing year based on harvest levels during 2021. The proposed rule contains background information and details that are not repeated here. The comment period on the proposed rule closed on September 7, 2021. NMFS received one written comment during the comment period. This comment, along with NMFS' response, is summarized below. After considering the comment, NMFS is finalizing the rule as proposed.

Specifically, NMFS is opening the fishing year for all shark management groups on January 1, 2022. As described in the proposed rule, in establishing the opening date, NMFS considered the "opening commercial fishing season" criteria at § 635.27(b)(3). These criteria include the following factors: available annual quotas for the current fishing season; estimated season length and average weekly catch rates from previous years; length of the season and fishermen participation in past years; impacts to accomplishing objectives of the 2006 Consolidated HMS FMP and its amendments; temporal variation in behavior or biology of target species (*e.g.*, seasonal distribution or abundance); impact of catch rates in one region on another; and effects of delayed season openings. This final rule also establishes a starting retention limit for directed shark limited access permit holders in the blacktip, aggregated LCS, and hammerhead management groups of 55 LCS other than sandbar sharks per vessel per trip for the entire Gulf of Mexico region (which includes both the eastern and western sub-regions) and for the Atlantic region. This final rule does not affect or change the current retention limit for incidental shark limited access permit holders for all regions. Consistent with § 635.24(a)(3) and (4), the current retention limits for incidental shark limited access permit holders will remain at 3 LCS other than sandbar sharks per vessel per trip, and no more than 16 small coastal sharks (SCS) and pelagic sharks, combined, per vessel per

trip. Additionally, the retention limit for blacknose sharks for all permit holders in the Atlantic region south of 34°00' N. lat. will remain at eight blacknose sharks per trip consistent with § 635.24(a)(4). Blacknose sharks may not be harvested in the Gulf of Mexico region.

This final rule also adjusts certain annual commercial quotas for 2022 based on over- and/or underharvests, calculated after accounting for landings reported by September 17, 2021, consistent with existing regulations. Updated landings information as of September 17, 2021 has been reviewed (as reflected in Table 1), and no quotas are changed from the proposed rule as a result. While this action adjusts certain quotas as allowable, it does not establish or change the annual baseline commercial quotas established under the 2006 Consolidated HMS FMP and its amendments for any shark management group. The baseline quotas were established under previous actions, and any changes to those baseline quotas would be performed through a separate action.

Response to Comments

NMFS received one written comment on the proposed rule. That comment can be found at <http://www.regulations.gov/> by searching for NOAA-NMFS–2021–0056. The comment received is summarized below.

Comment 1: NMFS received a comment requesting a prohibition of all commercial shark fishing.

Response: This comment is outside the scope of this rulemaking because the purpose of this rulemaking is to adjust certain quotas for the 2022 shark season based on over- and underharvests from the previous years and to set opening dates and commercial retention limits for the 2022 shark season. This action does not reanalyze the overall management measures for sharks, which have been analyzed and implemented through previous rulemaking processes for the 2006 Consolidated HMS FMP and its

amendments. Sustainable commercial shark fishing is allowed under the Magnuson-Stevens Act and other applicable laws.

Changes from the Proposed Rule

After considering public comment and updated landings information, NMFS is finalizing the rule as proposed, without changes regarding the fishing season opening dates or retention limits.

2022 Annual Quotas

This final rule adjusts certain 2022 commercial quotas due to overharvests in 2021 and previous fishing years and/or underharvests in 2021, based on landings data received by September 17, 2021. Underharvest adjustments can only be applied to stocks or management groups that are not overfished, have no overfishing occurring, or do not have an unknown status. Also, current regulations provide that the underharvest adjustments cannot exceed 50 percent of the base annual quota. The 2022 annual quotas are summarized in Table 1 by species and management group. At this time, NMFS anticipates that landings in dealer reports that NMFS receives after September 17, 2021, will be accounted for by adjusting certain 2023 quotas, as appropriate, although such landings could also be accounted for in 2022. A description of the quota calculations is provided in the proposed rule and is not repeated here.

Table 1 -- 2022 Proposed Quotas and Opening Date for the Atlantic Shark Management Groups

Region or Sub-region	Management Group	2021 Annual Quota (A)	Preliminary 2021 Landings ¹ (B)	Adjustments ² (C)	2022 Base Annual Quota (D)	2022 Proposed Annual Quota (D+C)
Western Gulf of Mexico	Blacktip Sharks ³	347.2 mt dw (765,392 lb)	222.6 mt (490,693 lb)	115.7 mt (255,131 lb)	231.5 mt (510,261 lb)	347.2 mt (765,392 lb)
	Aggregated Large Coastal Sharks	72.0 mt (158,724 lb)	66.9 mt (147,445 lb)	-	72.0 mt (158,724 lb)	72.0 mt (158,724 lb)
	Hammerhead Sharks	11.9 mt (26,301 lb)	<1.5 mt (<3,300 lb)	-	11.9 mt (26,301 lb)	11.9 mt (26,301 lb)
Eastern Gulf of Mexico	Blacktip Sharks ³	37.7 mt (83,158 lb)	15.3 mt (33,800 lb)	12.6 mt (27,719 lb)	25.1 mt (55,439 lb)	37.7 mt (83,158 lb)
	Aggregated Large Coastal Sharks	85.5 mt (188,593 lb)	49.7 mt (109,566 lb)	-	85.5 mt (188,593 lb)	85.5 mt (188,593 lb)
	Hammerhead Sharks	13.4 mt (29,421 lb)	5.7 mt (12,567 lb)	-	13.4 mt (29,421 lb)	13.4 mt (29,421 lb))
Gulf of Mexico	Non-Blacknose Small Coastal Sharks	112.6 mt (248,215 lb)	31.8 mt (70,172 lb)	-	112.6 mt (248,215 lb)	112.6 mt (248,215 lb)
	Smoothhound Sharks	504.6 mt (1,112,441 lb)	0 mt (0 lb)	168.2 mt (370,814 lb)	336.4 mt (741,627 lb)	504.6 mt (1,112,441 lb)
Atlantic	Aggregated Large Coastal Sharks	168.9 mt (372,552 lb)	53.5 mt (117,960 lb)	-	168.9 mt (372,552 lb)	168.9 mt (372,552 lb)
	Hammerhead Sharks	27.1 mt (59,736 lb)	12.2 mt (26,842 lb)	-	27.1 mt (59,736 lb)	27.1 mt (59,736 lb)
	Non-Blacknose Small Coastal Sharks	264.1 mt (582,333 lb)	52.4 mt (115,473 lb)	-	264.1 mt (582,333 lb)	264.1 mt (582,333 lb)
	Blacknose Sharks (South of 34° N. lat. only)	17.2 mt (37,921 lb)	5.3 mt (11,787 lb)	-	17.2 mt (37,921 lb)	17.2 mt (37,921 lb)
	Smoothhound Sharks	1,802.6 mt (3,971,587 lb)	272.3 mt (600,339 lb)	600.9 mt (1,324,634 lb)	1,201.7 mt (2,649,268 lb)	1,802.6 mt (3,973,902 lb)
No regional quotas	Non-Sandbar LCS Research	50.0 mt (110,230 lb)	7.4 mt (16,304 lb)	-	50.0 mt (110,230 lb)	50.0 mt (110,230 lb)
	Sandbar Shark Research	90.7 mt (199,943 lb)	49.0 mt (108,131 lb)	-	90.7 mt (199,943 lb)	90.7 mt (199,943 lb)
	Blue Sharks	273.0 mt (601,856 lb)	<1.0 mt (<2,200 lb)	-	273.0 mt (601,856 lb)	273.0 mt (601,856 lb)

	Porbeagle Sharks	1.7 mt (3,748 lb)	<1.0 mt (<2,200 lb)	-	1.7 mt (3,748 lb)	1.7 mt (3,748 lb)
	Pelagic Sharks Other Than Porbeagle or Blue	488.0 mt (1,075,856 lb)	30.3 mt (66,738 lb)	-	488.0 mt (1,075,856 lb)	488.0 mt (1,075,856 lb)

¹ Landings are from January 1, 2021, through September 17, 2021, and are subject to change as additional data is received.

² Underharvest adjustments can only be applied to stocks or management groups that are not overfished and have no overfishing occurring and that do not have an “unknown” status. Also, the underharvest adjustments cannot exceed 50 percent of the base quota.

³ This adjustment accounts for underharvest in 2021. This proposed rule would increase the overall Gulf of Mexico blacktip shark quota by 128.3 metric ton (mt) (282,850 pounds (lb)). Since any underharvest would be divided based on the sub-regional quota percentage split, the western Gulf of Mexico blacktip shark quota would be increased by 115.7 mt, while the eastern Gulf of Mexico blacktip shark quota would be increased by 12.6 mt.

2022 Atlantic Commercial Shark Fishing Year

After considering the seven “opening commercial fishing season” criteria listed in § 635.27(b)(3) as described in the proposed rule (86 FR 43151; August 8, 2021), and after considering public comment, this rule establishes a January 1, 2022, commercial shark fishing year start date for all management groups in all regions.

Regarding the LCS retention limit, as shown in Table 2, directed shark limited access permit holders fishing on the Gulf of Mexico blacktip shark, aggregated LCS, and hammerhead shark management groups, as well as the Atlantic aggregated LCS and hammerhead shark management groups will start the commercial fishing year with a limit of 55 LCS other than sandbar sharks per vessel per trip. These retention limits could be changed throughout the year based on consideration of the inseason trip limit adjustment criteria at § 635.24(a)(8).

All of the shark management groups will remain open until December 31, 2022, or until closure is appropriate. Under the regulations, shark fisheries are closed if NMFS determines that the landings for any shark management group have reached, or are projected to reach, 80 percent of the available overall, regional, and/or sub-regional quota, if the fishery’s landings are not also projected to reach 100 percent of the applicable quota before the end of the season, or when the quota-linked management group is closed. For the blacktip shark management group, regulations at § 635.28(b)(5)(i) through (v) authorize NMFS to close the management group before landings reach or are expected to reach 80 percent of the available overall, regional, and/or sub-regional quota after considering the following criteria and other relevant factors: Season length based on available sub-regional quota and average sub-regional catch rates; variability in regional and/ or sub-regional seasonal distribution, abundance, and migratory patterns; effects on accomplishing the objectives of the 2006 Consolidated Atlantic HMS FMP and its amendments; amount of remaining shark quotas in the

relevant sub-region; and regional and/or sub-regional catch rates of the relevant shark species or management groups. Additionally, NMFS has previously established non-linked and linked quotas. Linked quotas are explicitly designed to concurrently close shark management groups that are caught together and linked by regulation to prevent incidental catch mortality from exceeding the total allowable catch. The linked and non-linked quotas are shown in Table 2. If NMFS determines that a shark species or management group must be closed, then NMFS will publish a notice in the **Federal Register** of closure for that shark species, shark management group, region, and/or sub-region that will be effective no fewer than 4 days from the date of filing (§ 635.28(b)(2) and (3)). From the effective date of the notice and time of the closure, the fisheries for the shark species or management group are closed, even across fishing years, until NMFS announces, via the publication of a notice in the **Federal Register**, that additional quota is available, and the season is reopened.

Table 2 -- Quota Linkages, Opening Dates, and Commercial Retention Limit by Regional or Sub-Regional Shark Management Group

Region or Sub-region	Management Group	Quota Linkages	Opening Dates	Commercial Retention Limits for Directed Shark Limited Access Permit Holders (inseason adjustments are available)
Eastern Gulf of Mexico	Blacktip Sharks	Not Linked	January 1, 2022	55 LCS other than sandbar sharks per vessel per trip
	Aggregated Large Coastal Sharks	Linked		
	Hammerhead Sharks			
Western Gulf of Mexico	Blacktip Sharks	Not Linked	January 1, 2022	55 LCS other than sandbar sharks per vessel per trip
	Aggregated Large Coastal Sharks	Linked		
	Hammerhead Sharks			
Gulf of Mexico	Non-Blacknose Small Coastal Sharks	Not Linked	January 1, 2022	N/A
	Smoothhound Sharks	Not Linked	January 1, 2022	N/A

Atlantic	Aggregated Large Coastal Sharks	Linked	January 1, 2022	55 LCS other than sandbar sharks per vessel per trip
	Hammerhead Sharks			
	Non-Blacknose Small Coastal Sharks	Linked (South of 34° N. lat. only)	January 1, 2022	N/A
	Blacknose Sharks (South of 34° N. lat. only)			8 blacknose sharks per vessel per trip (applies to directed and incidental permit holders)
	Smoothhound Sharks	Not Linked	January 1, 2022	N/A
No regional quotas	Non-Sandbar LCS Research	Linked	January 1, 2022	N/A
	Sandbar Shark Research			
	Blue Sharks	Not Linked	January 1, 2022	N/A
	Porbeagle Sharks			
	Pelagic Sharks Other Than Porbeagle or Blue			

¹ This action modifies the percent of quota harvested at which it considers adjusting the retention limit. NMFS will consider adjustment to 40 percent to allow fishermen in the Atlantic region to more fully utilize the quota.

Classification

NMFS is issuing this rule pursuant to 305(d) of the Magnuson-Stevens Act, which authorizes the Secretary to promulgate regulations as may be necessary to carry out FMPs or FMP amendments or other provisions of the Act. This action carries out provisions of the 2006 Consolidated HMS FMP and its amendments. The NMFS Assistant Administrator has determined that the final rule is consistent with the 2006 Consolidated HMS FMP and its amendments, other provisions of the Magnuson-Stevens Act, and other applicable laws.

This final rule has been determined to be not significant for purposes of Executive

Order 12866.

This final rule contains no information collection requirements under the Paperwork Reduction Act of 1995.

The Chief Counsel for Regulation of the Department of Commerce certified to the Chief Counsel for Advocacy of the Small Business Administration during the proposed rule stage that this action would not have a significant economic impact on a substantial number of small entities. The factual basis for the certification was published in the proposed rule and is not repeated here. No comments were received regarding this certification. As a result, a regulatory flexibility analysis was not required, and none was prepared.

List of Subjects in 50 CFR Part 635

Fisheries, Fishing, Fishing vessels, Foreign relations, Imports, Penalties, Reporting and recordkeeping requirements, Statistics, Treaties.

Authority: 16 U.S.C. 971 *et seq.*; 16 U.S.C. 1801 *et seq.*

Dated: November 8, 2021.

Samuel D. Rauch, III

Deputy Assistant Administrator for Regulatory Programs,
National Marine Fisheries Service.

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